

REMARKS

In the Final Office Action, the Examiner rejected claims 28-32 under 35 U.S.C. § 103(a) as being unpatentable over JP-245183A (JP '183) in view of Smillie, III (U.S. Patent No. 4,941,797).

Applicants propose amending claims 28-32 to more appropriately define the invention. Applicants also propose adding claim 33. Upon entry of these amendments, claims 28-33 will remain pending in the application.

Applicants address the claim rejections as follows.

Neither JP '183 nor Smillie teaches or suggests "all the claim limitations" of amended claim 28

Applicants respectfully traverse the rejections of claims 28-32 under 35 U.S.C. § 103(a) as being obvious over JP '183 in view of Smillie.¹ A prima facie case of obviousness has not been established.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must

¹ Applicants also contend that the Examiner improperly relied on Smillie for claim rejections under 35 U.S.C. § 103(a), because Smillie is a non-analogous art. Applicants will present the non-analogous argument later in this paper.

both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

M.P.E.P. § 2143 (8th ed., revised on Aug. 2005) (emphasis added).

A prima facie case of obviousness has not been established because, among other things, neither JP '183 nor Smillie, nor their combination, teaches or suggests each and every feature of Applicants' claims.

For example, amended claim 28 recites a double-deck elevator that includes covers:

wherein at least one of the covers which covers the space at the doorside of the space covers the door driving unit and a top portion of the door link and has a first portion extending downwardly from the upper cage and positioned closer to a doorside inner wall of the hoistway than the door driving unit, and a second portion extending in a horizontal direction from the lowest portion of the first portion away from the doorside inner wall to the door driving unit, the at least one cover including at least one slit through which the door link is inserted, the slit being oriented so as to allow a displacement of said door link in a direction parallel to the direction of movement of the at least one door.

(emphasis added.)

JP '183 does not teach or suggest each and every element of amended claim 28. JP '183 only teaches using a sill blocking-up plate 1 that projects when a lower car of a double deck elevator is put in an opening condition. See English Abstract, JP '183. Even the Examiner acknowledges that "JP ['183] lacks covers for covering the space between the upper and lower cages," as recited in claim 28. Final Office Action, at p. 2.

Smillie fails to cure the deficiencies of JP '183. The Examiner asserts that

Simille [sic] '797 discloses a lifting platform comprising covers 82 for covering a space between the platform and its base, the cover includes

a first portion extending downwardly from the platform (see Figure 10 below), a second portion extending from the first portion, and including a slit, wherein the covers are formed as bellow and made of flexible plastic.

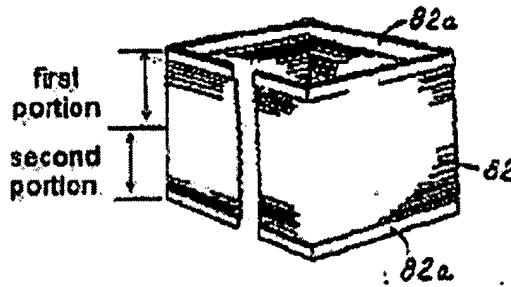


Figure 10

Final Office Action, at p. 2. Even assuming the Examiner's assertion is correct, Smillie nonetheless fails to teach or suggest at least "a second portion extending in a horizontal direction from the lowest portion of the first portion away from the doorside inner wall to the door driving unit," as recited in amended claim 28 (emphasis added).

Applicants note that according to the Examiner's notation on Figure 10 of Smillie (shown above), the second portion of cover 82 of Smillie extends in a vertical direction, not "in a horizontal direction," as recited in amended claim 28.

In view of the above, JP '183 and Smillie, taken alone or in combination, fail to teach or suggest each and every element of amended claim 28. At least on this basis, amended claim 28 is allowable over JP '183 and Smillie.

Claims 29-33 depend from amended claim 28 and are also allowable at least due to their dependence on an allowable base claim.

Smillie is a non-analogous art

Applicants also submit that the Examiner improperly relied on Smillie for claim rejections under 35 U.S.C. § 103(a), because Smillie is a non-analogous art. “In order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1446, 24 UPSQ2d 1443, 1445 (Fed. Cir. 1992); M.P.E.P. § 2141.01(a). The present invention is generally directed to double deck elevators, while Smille describes a power-operated lift and presenting mechanism that may be used to assist a person to load or unload heavy and bulky articles in a trunk of an automobile. See Smillie, col. 6, ll. 33-38. Accordingly, Smillie is clearly not “in the field of applicant’s endeavor.”

Moreover, the present invention addresses the problems of quietness and comfortableness in upper and lower cages of double deck elevators. See Specification, at 1. In contrast, the pertinent part of Smille relied upon by the Examiner, bellowed covering 82, is “provided for protecting the lift assembly while not impeding its capability of expanding and contracting vertically.” Smille, Abstract & col. 5, ll. 51-53. Therefore, Smille is not “reasonably pertinent to the particular problem with which the inventor was concerned.” Accordingly, Smille is a non-analogous art and the rejection under 35 U.S.C. § 103(a) is improper.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 28-33 in condition for allowance. The proposed amendments do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. Therefore, this Amendment should allow for immediate and favorable action by the Examiner.

Finally, Applicants submit that the entry of the Amendment after Final would place the application in better form for appeal, should the Examiner continue to dispute the patentability of the pending claims.


Conclusion

In view of the foregoing amendments and remarks , Applicants respectfully request the entry of the amendments and the reconsideration and allowance of the application.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,
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